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ARTICLE I. IN GENERAL

Sec. 8-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) *Accessory building*: A building subordinate to, and located on, the same lot or lots with a main building, the use of which is clearly incidental to that of the main building or to the use of the land and which is not attached by any part of a common wall or common roof to the main building.

(b) *Alley*: A right-of-way which provides secondary access for vehicles to the side or rear of abutting properties.

(c) *Antenna*: Equipment designed for the transmission or reception of electromagnetic waves. All wires, poles, dishes, towers and other appurtenant equipment shall be deemed to be a part of the antenna.

(d) *Building*: A structure having one (1) or more stories and a roof, designated primarily for the shelter, support or enclosure of persons, animals or property of any kind.

(e) *Building height*: The vertical distance measured from the average elevation of the finished grade or pre-development grade, whichever is lower, along the front of the building to:

(1) the highest point of roof surface regardless of roof type, and

(2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

Accessory structural elements located on the roof shall be subject to the building height requirements.

(f) *Building line*: A line extending from lot line to lot line at the outermost wall of a building.

(g) *Curb cut*: A depression in the curb, for the purpose of accommodating a driveway that provides vehicular access between private property and an improved roadway, or where there is no curb, the intersection of the driveway and edge of the improved roadway.

(h) *Developmental nonconformity*: Any part of an existing structure which was lawful when established, but which no longer conforms to the requirements because of the amendment of this chapter.

(i) *Dumpster*: A large bin designed or used to store construction and/or demolition debris awaiting transportation to a disposal site, including, but not limited to, detached wheeled trailers.

(j) *Floor area ratio (FAR)*: The ratio of the total gross floor area of all buildings on a lot to the total square footage of the lot.

(k) *Footprint*: The external or outer boundaries of a building's architectural plan. "Footprint" includes fixed external protrusions such as bay or bow windows, porches, porticos, decks, stoops and eaves.

(l) *Front lot line*: The boundary line or lines of a lot separating the lot from any and all streets.

(m) *Front yard*: The area located between the front lot line and the front main building line or, in cases where no building exists, the front building restriction line.

(n) *Gross floor area*: The sum of the gross horizontal areas of all stories (whether or not a floor has actually been laid) of all buildings on the lot. Gross horizontal areas are measured from the exterior faces of exterior walls.

(1) The following areas are included in the gross floor area for the purpose of computing the floor area ratio.

- a. Except as provided below, all floor area at or above the first floor joists.
- b. If an attic has a clear ceiling height of seven (7) feet at any point, all areas of the attic with at least five (5) feet of clear ceiling height shall be included.
- c. Multi-story space. Any space with a clear ceiling height greater than ten (10) feet from floor to ceiling shall count at the rate of ten (10) percent for each foot of average height over ten (10) feet, rounded to the nearest foot. For example, a room with an average ceiling height of fourteen (14) feet will count at the rate of one hundred forty (140) percent (one hundred (100) percent for the base floor and forty (40) percent for the virtual floor).
- d. Enclosed porches. A porch shall be deemed enclosed if it is enclosed on at least three (3) sides. A side shall be deemed enclosed if:
 1. it is screened; or
 2. it has a wall over thirty-eight (38) inches in height.
- e. Basements and cellars. All sections of a basement or cellar with at least five (5) vertical feet of exposed exterior wall shall count toward gross floor area at the rate of seventy-five (75) percent.

(2) The following areas are excluded from the gross floor area for the purpose of computing floor area ratio.

- a. The first two hundred forty (240) square feet of one accessory building per lot.
- b. If an attic does not have a clear ceiling height of seven (7) feet at any point, all attic space.

- c. If an attic has a clear ceiling height of seven (7) feet at any point, all attic space with a clear ceiling height of less than five (5) feet.
- d. Unenclosed roofed porches.
- e. Porches, balconies, patios, breezeways, carports, decks, overhangs, eaves, awnings and similar structures which are enclosed on fewer than three (3) sides.
- f. Sections of a basement or cellar with less than five (5) vertical feet of exposed exterior wall.

(o) *Lot*: The land designated as a separate and distinct lot or parcel of land on a legally recorded subdivision plat or deed filed among the land records of the County (also sometimes referred to as a “property”).

(p) *Lot coverage*: The portion of a lot which is covered by buildings, accessory buildings, and raised structures such as covered and uncovered porches, balconies, and decks, covered and uncovered steps, stairways, and stoops, and bay and bow windows. Lot coverage does not include: (1) eaves, gutters, and similar overhangs; and (2) features that are not raised such as walkways, patios, terraces, driveways, swimming pools and tennis courts.

(q) *Outdoor therapeutic bath*: A bath commonly known as a spa or hot tub, or having similar characteristics, built above or below ground outside of a residential building, provided such bath does not exceed a depth of forty-eight (48) inches at any point or a diameter or length of eight (8) feet. If these dimensions are exceeded, the bath shall be considered a swimming pool for the purposes of this Chapter.

(r) *Plane length*: The horizontal length along the face of any exterior wall of a building.

(s) *Plate height*: For a building with a flat or a sloping roof, the height to the top horizontal framing member of a wall from the top surface of the first finished floor.

(t) *Portable storage unit*: A container designed or used for the outdoor storage of personal property which is movable and is typically rented to owners or occupants of a property for their temporary use.

(u) *Portable swimming pool*: Any swimming pool (as defined below), which is movable and less than eight (8) feet in diameter or length, shall be deemed a portable swimming pool.

(v) *Public right-of-way*: Any land within the borders of the Village over which the Village has control, ownership, or which has been dedicated to the Village, including any sidewalk or street.

(w) *Rear yard*: The area located between the rear main building line and the rear lot line.

(x) *Right-of-way license agreement*: A written agreement setting forth the terms and conditions upon which an abutting property owner may place a fence, wall, tree, hedge, shrubbery or other growth in the public right-of-way. Such agreement may be recorded in the County land records at the abutting property owner’s expense.

(y) *Side wall*: A wall running parallel (or approximately so) to a side property line.

(z) *Single family*: An individual, or two (2) or more persons related by blood, adoption or marriage, together with not more than one (1) other unrelated person, excluding service personnel, living together as a single housekeeping unit.

(aa) *Special permit*: Permission granted by the Board of Managers in accordance with Article II, Division B of this Chapter, to construct, install, remove or alter a structure or planting, or take other action where such permission is required by this Chapter.

(bb) *Street*: A public or dedicated right-of-way, including, but not limited to, roadways, parkways, avenues, highways or other public thoroughfares for vehicular or pedestrian traffic. A public sidewalk constitutes an adjunct or accessory to a street to be used for pedestrian traffic.

(cc) *Structure*: An assembly of materials forming a construction including, but not limited to, buildings, accessory buildings, antennas, open sheds, shelters, tennis courts, air conditioners and swimming pools, but not including walkways, patios, driveways or play equipment.

(dd) *Swimming pool*: Any outdoor pool or container for water, either above or below ground, over eighteen (18) inches deep at any point or having a capacity for a minimum of eighteen (18) inches of depth, which has been dammed up, produced, or constructed by human labor and skill and which is used or intended to be used for swimming, wading, diving or water play. The words "swimming pool" shall not include a portable pool eight (8) feet or less in diameter or length, or an outdoor therapeutic bath as previously defined herein.

(9-13-93; No. 11-1-93, 11-22-93; No. 10-02-02, 10-14-02; No. 06-01-08, 06-16-08; No. 10-05-08, 12-08-08; No. 06-03-09, 07-13-09; No. 03-02-10, 05-10-10.)

Sec. 8-2. County Building Code.

The Building Code of Montgomery County, Maryland, shall be applicable in the Village as a County ordinance and shall be in addition to and not in lieu of the specific provisions of this Chapter or the building restrictions, which are incorporated in deeds of conveyance within the Village. Nothing in this Chapter shall be construed to relieve any person from the requirement of obtaining a building permit from the County Department of Environmental Protection or its successor agencies, or from obtaining approval from any other County or State agency regulating such construction.

(9-13-93)

Sec. 8-3. Reserved.

ARTICLE II. ADMINISTRATION

DIVISION A. PERMITS

Sec. 8-4. Residential building permits.

Any person intending to construct a new building or to make any material alteration, replacement or addition which would expand the existing boundaries or footprint or increase the height of an existing building within the Village must first obtain a building permit from both the county and Village. A valid County permit will be necessary prior to the Village issuing a building permit. In addition, any person intending to construct any of the following must, after obtaining a valid County building permit, obtain a building permit from the Village:

- (1) Construction or installation of a swimming pool or outdoor therapeutic bath (see section 8-24);
- (2) Construction of a tennis court (see section 8-23);
- (3) Construction of a garage, raised exterior deck or accessory building (see sections 8-17 and 8-21);
- (4) Installation, replacement or alteration of a driveway or sidewalk or any material part thereof (see sections 8-26 and 8-30);
- (5) Installation, replacement or alteration of any fence, wall or any material part thereof, or tree on or within seven (7) feet of the property line or within the public right-of-way (see sections 8-22 and 8-31);

- (6) Construction or installation of an external antenna, air conditioner or heat pump, including the replacement of any external air conditioner or heat unit, which is a developmental nonconformity (see sections 8-20 and 8-23);
- (7) Any grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, or installation of a sewer, storm-water or drainage system or gutters, which alter the existing flow of water and/or cause water to flow onto neighboring property or onto the public right-of-way (see section 8-25); or
- (8) Installation, replacement or alteration of overhead or underground wires, cables, hoses, pipes, and similar facilities on, over, or under any street or other public right-of-way (see Section 8-29).

(9-13-93; No. 02-02-10, 02-16-10.)

Cross reference(s)--Urban forest, Ch. 17. Fine for violation of this section, § 6-3(a)(1).

Sec. 8-5. Non-residential building permits.

On any property within the Village, which is not residentially zoned, any new construction, or material alteration, replacement or addition to an existing building or structure shall be governed by the County building code; provided, however, that any person proposing to erect such a new building or structure or make a material alteration, replacement or addition to such an existing building property shall also make application for a building permit as provided in section 8-8.

(9-13-93)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(2).

Sec. 8-6. Exercise of authority by Board of Managers.

(a) Under the authority vested in it by the legislature of the State, and subject to the review authority set forth in section 8-11, the Board of Managers has delegated to the Village Manager the duty and authority to enforce, or cause to be enforced, the requirements of all deeds or covenants of properties situated within the Village and the requirements of this building code. In the exercise of this duty, the Village Manager is authorized to issue building permits.

(b) The Board of Managers shall require the Village Manager to report at each regular monthly meeting all building permits issued during the preceding month, together with the location of any new structure, construction, material alteration, replacement or addition and the extent of the construction involved in each case.

(9-13-93)

Sec. 8-7. Powers of Village Manager.

(a) The Village Manager shall have the power to examine or cause to be examined any new building or any alteration, replacement or addition to an existing building or structure for which a Village building permit is required by this Chapter as often and at such times as he or she deems necessary during the course of construction, in order to ensure compliance with this Chapter, Village ordinances and covenants.

(b) In the event that the Village Manager determines that any work for which a building permit is required has taken place without a building permit having been obtained or that any work for which a building permit has been obtained has been performed in violation of such building permit or this Chapter, the Village Manager may issue a stop work order or take other remedial action in accordance with the provisions of section 8-14 of this Code.

(c) If, as a result of the complaint of any Village resident or upon his own observation, the Village Manager believes that any structure, building, accessory building, garage, fence or wall within the Village constitutes a safety hazard, he shall proceed in accordance with section 8-18 hereafter or take any other authorized remedial action.

(9-13-93)

Cross reference(s)--Duties of Village Manager, § 3-7.

Sec. 8-8. Application for building permit.

(a) An application for a building permit shall be made to the Village Manager and be accompanied by plans and specifications of the construction intended. The Village Manager shall retain a copy thereof. The plans shall include an accurate, reasonably current survey and show the location of the existing and intended structures on a site plan of the applicant's lot. When the plans and specifications are approved, the Village Manager shall indicate approval thereon and issue a building permit.

(b) The Village Manager is authorized to impose conditions to protect the public health, safety or welfare when issuing a building permit. If, during the course of a construction project, the Village Manager finds the project is being carried out in a manner which threatens the public health, safety or welfare, the Village Manager may suspend or revoke the permit, or may impose such additional conditions as he deems necessary to protect the public health, safety or welfare. The conditions which the Village Manager may impose shall include, but are not limited to:

- (1) prohibiting or limiting the parking of contractors' or other construction-related vehicles in the public right-of-way;
- (2) limiting the locations upon private property where contractors' or other construction-related vehicles may be parked;
- (3) limiting the locations upon which construction materials may be stored;
- (4) limiting the locations upon which portable toilets may be placed or maintained, including prohibiting the placing or maintaining of portable toilets;
- (5) limiting the locations upon which construction debris may be stored, whether or not such debris is contained;
- (6) requiring that construction and/or demolition activities strictly comply with a tree preservation plan approved by the Village Manager;
- (7) such other terms or conditions as may be determined by the Village Manager to be necessary to protect the public health, safety or welfare.

(c) Work on buildings or alterations or additions must be commenced within six (6) months after the issuance of any building permit, and must be completed within one (1) year from the date of issuance. In cases where the Board has not conducted a hearing in connection with a variance, special permit, or other appeal relating to the work, alteration or addition, and construction has not commenced, the Village Manager may grant an extension, upon such conditions as the Village Manager may set, upon a reasonable showing by the permittee necessary to accomplish the approved construction. In cases where the Board has conducted a hearing in connection with a variance, special permit, or other appeal relating to the work, alteration or addition, or if construction has commenced, the Board of Managers may grant an extension, upon such conditions as the board may set, upon a reasonable showing by the permittee that there has been no material change in circumstances since the issuance of the permit and despite due diligence by the permittee, additional time is necessary to accomplish the approved construction.

(d) The permit may be revoked by the Village Manager if the work has stopped for thirty (30) days.

(e) Failure to complete all work, in accordance with the terms and conditions of a building permit, by the expiration date of such building permit (as the same may be extended pursuant to subsection (c) above), shall be a violation of this Chapter. Each day, after the permit expires, that such work is incomplete shall constitute a separate violation.

(f) Failure to comply with any term or condition of a building permit, or any term or condition of any applicable approved variance, shall be a violation of this Chapter. Each day that a violation exists shall constitute a separate violation.

(9-13-93; No. 9-2-95, 9-11-95; No. 3-1-96, 3-11-96; No. 3-4-96, 3-11-96; No. 3-01-99, 4-05-99; No. 06-01-05, 06-13-05; No. 02-03-09, 02-09-09)

Cross reference(s) -- Municipal infraction fines, § 6-3(a)(3) and § 6-3(a)(16).

Sec. 8-9. Modification of approved plan.

No person or persons shall erase, modify or alter any plan or specifications after it has been submitted and a permit issued thereon. If during the progress of work it is desired to deviate materially from the approved plan or specifications, notice of such intent shall be given in writing to the Village Manager, and his written approval thereof and assent thereto shall be obtained before such deviation or alteration is made. No person or persons shall proceed with the building of any structure, material alteration or addition, except in accordance with the plans and specifications approved therefore, or in accordance with deviations or alterations approved by the Village Manager.

(9-13-93)

Cross reference(s) -- Fine for violation of this section, § 6-3(a)(4).

Sec. 8-10. Dumpsters and portable storage units.

(a) *Dumpsters.* No person shall place or maintain a dumpster within the Village without obtaining a permit from the Village Manager. The Village Manager may condition such permit upon such terms or restrictions as he deems necessary to protect the public health, safety or welfare.

(b) *Portable storage units.*

- (1) No person shall place or maintain a portable storage unit within the Village without obtaining a permit from the Village Manager.
- (2) The Village Manager may issue a permit for a portable storage unit for up to thirty (30) days. During such period, an approved portable storage unit may be placed or maintained on the applicant's private property, subject to such terms or restrictions as the Village Manager deems necessary to protect the public health, safety or welfare.
- (3) The Village Manager may authorize an extension for up to thirty (30) days, upon such conditions as the Village Manager may deem necessary, provided the applicant demonstrates that factors beyond the applicant's control warrant such extension.

(c) No person shall place or maintain a portable storage unit or dumpster on public property or in the public right-of-way.

(No. 10-02-02, 10-14-02; No. 10-05-08, 12-08-08)

DIVISION B. APPEALS, SPECIAL PERMITS AND VARIANCES

Sec. 8-11. Review authority of Board of Managers.

In addition to any other authority it may have, the Board of Managers shall have the following powers:

(a) To hear and decide appeals arising from the granting or denial of a building permit or any allegation that there is an error in any requirement, determination or decision by the Village Manager in the administration or enforcement of this Chapter.

(b) To hear and decide any application for a special permit required by this chapter. Such a special permit may be granted by the Board of Managers only if it finds that:

- (1) The proposed special permit would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties;
- (2) The proposed special permit can be granted without substantial impairment of the intent and purpose of this chapter; and
- (3) For all special permits, except for special permits authorized by Sections 8-22, 8-26 or Article IV of this Chapter, the structure authorized by the proposed special permit would not violate any covenant applicable to the property.

(c) To hear and decide any application for a variance from the requirements of this chapter. Such a variance may be granted by the Board of Managers only if it finds that:

- (1) The proposed variance is required because special conditions exist whereby the enforcement of the requirements of this chapter would result in unwarranted hardship and injustice to the owner.
- (2) The proposed variance would most nearly accomplish the intent and purpose of the requirements of this Chapter; and
- (3) For all variances, except for variances from the requirements of Sections 8-22, 8-26 or Article IV of this Chapter, the structure authorized by the proposed variance would not violate any covenant applicable to the property.

(9-13-93; No. 11-1-93, 11-22-93; No. 10-2-05, 10-27-05)

Sec. 8-12. Review procedures.

(a) *Appeal.* Any person aggrieved by a decision or action of the Village Manager arising from the granting or denial of a building permit may file an appeal to the Board of Managers. Such appeal shall be filed within (30) days after issuance of the decision or notice of action by the Village Manager. The Village Manager shall transmit to the Board of Managers all documents and papers pertaining to the appeal which shall constitute the record on appeal.

(b) *Application for special permit or variance.* Application for a special permit or variance may be made by any applicant who has been denied a building permit for nonconformance with this Chapter. The application and accompanying maps, plans or other information shall be submitted to the Village Manager, who shall place the matter on the Board agenda and announce a public hearing thereon, which shall be held at a regular monthly or special meeting of the Board of Managers. The Village Manager shall give written notice of such hearing to the parties in interest and to abutting property owners at least ten (10) days prior to the meeting of the Board of Managers at which such application is to be heard.

(c) *Quorum.* For the conduct of any such review hearing, a quorum shall be not less than four (4) members of the Board of Managers and in all instances an affirmative vote of four (4) members of the Board of Managers shall be required to overrule any decision, ruling or determination of the Village Manager or to approve any special permit or variance, provided that nothing in this section shall be construed to relieve any person from the requirements of obtaining a building permit, special permit or variance from the county as may be required by the County.

(d) *Decision.* At the hearing, any party may appear in person or by agent or by attorney. The decision of the Board of Managers shall be made in writing. The effective date of any decision of the Board of Managers shall be the date when such Board approves its written decision. In exercising its powers, the Board of Managers may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as it deems appropriate.

(e) *Record of decision.* The Secretary of the Board of Managers shall keep minutes of all review hearings, showing the vote of each member, including whether the member was absent or declined to vote. These minutes and the Board of Managers' decision shall be filed in the Village office and shall be a public record.

(f) *Extension.* The Board of Managers may extend any time limit imposed as a condition of a special permit or variance upon a reasonable showing that there has been no material change in circumstance since the special permit or variance was granted and, despite due diligence by the permittee, additional time is necessary to accomplish the approved construction.

(9-13-93; No. 11-1-93, 11-22-93; No. 9-2-95, 9-11-95; No. 10-1-01, 10-8-01; No. 10-02-05, 10-27-05)

Sec. 8-13. Administrative variances and special permits and Building Officer.

(a) Notwithstanding anything in this Chapter to the contrary, variances and special permits that would otherwise be subject to approval by the Board of Managers may be granted administratively as provided in this Section.

(b) Annually, or at such other times as the Board of Managers may determine is in the public interest, the Board of Managers shall appoint a member of the Board of Managers to act as its designee (the "Building Officer") to perform the functions of the Building Officer as described in this Chapter.

(c) The Building Officer and the Village Manager, by joint action, may grant variances and special permits for the following construction.

- (1) Replacement of an existing fence, provided that there are no material differences between the replacement fence and the existing fence with respect to location, height and materials and that the replacement fence does not block light and air to a greater extent than the existing fence.
- (2) Replacement of an existing driveway, provided that the replacement driveway is not wider than the existing driveway and is in substantially the same location as the existing driveway.
- (3) Replacement of an external air conditioner, generator or heat pump (collectively referred to as "equipment"), provided that the replacement equipment is not materially larger and does not encroach farther into any setback than the existing equipment.

(d) Administrative variance and special permit applications shall be processed as follows. Upon receipt of a complete application, the Village Manager shall give written notice of the application to all abutting and confronting property owners and to all members of the Board of Managers. In addition, the property shall be posted with a sign which shall include the case number, nature of the application, and the date by which comments may be submitted. An abutting or confronting property owner, a member of the Board of Managers or an aggrieved resident, within 15 days of the date notices are issued, may

submit written comments and/or may request that the application be submitted to the Board of Managers in accordance with Section 8-12 of this Chapter. The Building Officer and the Village Manager may, in their discretion, grant a request to have the application considered by the Board of Managers. The Building Officer and the Village Manager may, on their own initiative, refer the application to the Board of Managers. Notwithstanding the foregoing, for special permits and variances for equipment described in Section 8-13(c)(3), the Building Officer and the Village Manager may waive the 15-day notice and comment period upon a showing of good cause.

(e) The decision to grant or deny a request for an administrative variance or special permit shall be made in writing. The effective date of the decision shall be the date the written decision is approved by the Building Officer and the Village Manager. The decision shall promptly be provided to the applicant and to any other person who submitted comments and/or requested a hearing by the Board of Managers.

(f) The decision of the Building Officer and the Village Manager may be appealed to the Board of Managers within 15 days of the effective date of the decision. Any appeal to the Board of Managers from a decision to grant or deny an administrative variance or special permit shall be heard as a new application without deference to the administrative decision.

(No. 09-01-11, 09-12-11; No. 04-01-12, 04-09-12)

DIVISION C. ENFORCEMENT

Sec. 8-14. Remedial action and stop work order.

(a) Any person violating or failing to comply with this Chapter in whole or in part shall make or cause to be made such alteration or removal of construction equipment or work commenced or finished as may be necessary to remedy a condition which violates this Chapter. If such remedy is not completed within fifteen (15) days from the date of notification of violation, unless the Board of Managers by a carried motion establishes a different time, the Board of Managers may by contract or otherwise remove such equipment or demolish such construction work or parts thereof which infringe upon this Chapter, and the cost of such work and the damages resulting therefrom shall be paid by such person upon request of the Board of Managers. The cost of any remedial action and the damages resulting from any such violation may be specially assessed against the property upon which the violation existed and collected with the property taxes or collected by a suit for damages.

(b) Whenever the Village Manager determines that construction within the Village is being carried out in a manner which threatens the public safety or health, or that any work is being carried out in violation of this Code, he may request the Board of Managers to take such remedial action as is necessary to eliminate the threat to the public safety or health, or, if he certifies that time is critical, he may order such construction to be stopped immediately and promptly notify the Chair of the Board of Managers of his action and provide a written certification.

- (1) The stop work order described herein, if approved by the Board of Managers, shall be issued by the Village Manager and served upon the permit holder, his agent or the person doing the work. The posting of the notice on the property shall be sufficient service upon all persons physically on the property.
- (2) It shall be unlawful for any person to continue work in or about such construction after having been served with a stop work order, except such work as he is directed to perform to remove a violation or to eliminate an unsafe condition.

(c) If construction and/or demolition activities do not strictly comply with a tree preservation plan imposed under Section 8-8(b) and a tree, the removal of which is regulated by Chapter 17, dies within 5 years of such violation, the owner of the property on which such violation occurred shall reforest with a deciduous hardwood canopy tree of at least 2 ½ inch caliper at the time of installation and of a species that attains a mature height of at least 45 feet. If the permit holder is not the owner of the property, the permit holder and

the owner shall be jointly and severally obligated to reforest.

(9-13-93; No. 06-01-05, 06-13-05)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(5).

Sec. 8-15. Municipal infraction; penalties.

(a) Violation of any provision of this Chapter shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to such prosecution and penalties as are provided in Chapters 5 and 6 of this Code. Any person who violates this Chapter or directs or allows another to commit an act that violates this Chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of this Chapter on his or her property, shall be guilty of a violation and shall be jointly and severally subject to prosecution and the penalties provided in Chapters 5 and 6 of this Code. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.

(b) The Village may institute injunctive or any other appropriate action or proceedings at law or equity for enforcement of this Chapter in any court of competent jurisdiction.

(9-13-93; No. 02-03-09, 02-09-09)

Cross reference(s)--Municipal infraction fines, § 6-3.

Sec. 8-16. Reserved.

ARTICLE III. PRIVATE PROPERTY REGULATIONS

Sec. 8-17. Residential building construction prohibitions.

(a) On any property zoned in a residential category, no person shall construct any building, structure or shall make any material alteration or addition to the exterior of an existing building or other structure except in accordance with the restrictions set forth in this Chapter.

(b) All houses in the Village shall be built and used for residential purposes exclusively, except accessory buildings for use in connection with such residences. No trade, business, manufacture or sales, or nuisance of any kind shall be carried on or permitted upon any premises within the Village.

(c) No structure or play equipment of any description shall be erected within twenty-five (25) feet of the front line of any lot, except that:

- (1) one flagpole, not exceeding fifteen (15) feet in height, may be erected not less than fifteen (15) feet from the front lot line; and
- (2) handrails may be installed:
 - a. on or beside steps in a yard where there is a change in grade upon a finding by the Village Manager that the handrails are required for safety, and
 - b. on or beside steps leading to a door or porch upon a finding by the Village Manager that the handrails are required for safety.

(d) Every building shall be located on a recorded lot.

(e) There shall not be more than one (1) single-family dwelling on one (1) lot.

(f) Any house erected on any lot shall be designed and constructed for the occupancy of a single family.

(g) No part of any building, structure or play equipment shall be erected or maintained within seven (7) feet of the side or rear lot lines, nor within ten (10) feet of the nearest adjacent dwelling.

(h) No part of any main building shall be erected within twenty (20) feet of the rear lot line of the property upon which it is to be located.

(i) No permit shall be issued for the construction of any dwelling house upon a lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet; provided, however, that these limitations shall not apply to any lot having a frontage of less than seventy-five (75) feet and an area of less than seven thousand five hundred (7,500) square feet which is embraced in any subdivision of lots recorded prior to July 12, 1982.

(j) No permit shall be issued for the erection of more than one (1) dwelling house on any corner lot, as such lot may be embraced in any subdivision duly recorded prior to July 12, 1982, but this subsection shall not apply in the case of any lot containing six thousand five hundred (6,500) square feet or more, which shall have been created by a re-subdivision of any such corner lot duly authorized by the Maryland-National Capital Park and Planning Commission.

(k) No permit shall be issued for the construction of any dwelling house, the rear of which shall face upon any public street.

(l) No permit shall be issued for the construction of any dwelling house unless it shall be located to conform to the requirements and covenants of deeds of conveyance of the lots on which it is located.

(m) The restrictions in sub-sections (2) through (5) below shall apply only to the construction of new houses on vacant lots and to construction subsequent to the substantial demolition of an existing main building.

(1) For the purposes of this sub-section 8-17 (m) the following definitions and rules apply.

a. The term "substantial demolition" shall mean the removal of fifty (50) percent or more of the area of exterior walls in existence as of June 16, 2008, measured by wall plane length and height.

b. In calculating the floor area ratio, the square footage of a lot shall include any land area severed from the lot by a conveyance to the Village, in fee simple, without monetary compensation.

(2) No permit shall be issued for construction which would result in floor area ratio in excess of .50. Notwithstanding the foregoing, for lots containing less than six thousand (6,000) square feet, buildings may contain gross floor area of three thousand (3,000) square feet.

(3) No permit shall be issued for construction which would result in gross floor area of greater than seven thousand five hundred (7,500) square feet, unless a special permit has been obtained from the Board of Managers.

(4) For all buildings, the maximum side wall plate height within twelve (12) feet of a side lot line shall be twenty-one (21) feet.

(5) For all buildings, the side wall plane length shall not exceed forty (40) feet unless there is an offset, jog, or articulation in the side wall plane that measures at least two (2) feet in depth and five (5) feet in length.

(n) The lot coverage on any residentially zoned lot shall not exceed thirty-five (35) percent.

(o) Main building height. None of the following restrictions may be exceeded.

- (1) The height of a main building shall not exceed thirty-five (35) feet when measured to the highest point of the roof surface regardless of roof type.
- (2) The height of a main building shall not exceed thirty (30) feet when measured to the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof.
- (3) The height of a main building shall not exceed thirty (30) feet when measured at the roof surface of a flat roof.

(p) Unless a special permit has been obtained from the Board of Managers, no permit shall be issued for the construction of any improvement which may reasonably be expected to injure a tree:

- (1) of any size on an abutting or nearby property, unless the owner of such property grants written permission; or
- (2) the removal of which is regulated by Chapter 17.

(q) No awning, canopy or other protrusion shall be erected between the front building restriction line and the front lot line.

(9-13-93; No. 11-1-93, 11-22-93; No. 6-01-97, 7-14-97; No. 10-01-03, 10-13-03; No. 09-02-05, 09-12-05; No. 06-01-08, 06-16-08; No. 06-03-09, 07-13-09)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(6).

Sec. 8-18. Unsafe structures.

If the Village Manager, after examination of any structure within the Village, deems it or any part thereof to be dangerous, the Village Manager shall serve notice upon the owner of such property, or the owner's agent and the occupant of such property, that the structure or any part thereof is not to be occupied and should be immediately vacated. This notice shall be in writing and shall be posted on the property and personally served upon the occupant and/or owner if such person is present at the property. If the Village Manager is unable personally to serve the occupant and/or the owner, service may be accomplished by posting the property and mailing a copy of the notice by certified mail to the property address and to such other address as the owner or the owner's agent has provided. The written notice shall set forth in detail the repairs necessary to remedy the dangerous condition of the structure. If the owner, agent or occupant refuses or neglects to correct the dangerous condition within such reasonable time as the Village Manager may direct, then the owner, agent or occupant shall be guilty of a municipal infraction and shall be subject to the penalties therefore.

(9-13-93)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(7).

Sec. 8-19. Demolition of buildings.

Any person intending to demolish, raze or tear down more than fifty (50) percent of the exterior features of an existing building, garage or accessory building within the Village must first obtain a special permit from the Board of Managers for such demolition in order to ensure that such work will be carried out in such a manner that abutting property owners will not be adversely affected and that the interests of the Village in public health, safety and welfare are not jeopardized by such work.

(9-13-93; No. 11-1-93, 11-22-93)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(8).

Sec. 8-20. Developmental nonconformities.

(a) A developmental nonconformity, which is part of a residence or is attached to a residence, may be replaced or repaired. A developmental nonconformity, which is detached from the residence, may be replaced or repaired only if such work involves less than fifty (50) percent of the nonconformity. A developmental nonconformity may not be expanded. An external air conditioner, heat pump or generator which is located so that it is a developmental nonconformity may not be replaced, unless the Board of Managers grants a variance.

(b) *Buildings existing prior to June 16, 2008.* Notwithstanding any provision to the contrary contained in Sections 8-17 or 8-21, a building or structure existing prior to June 16, 2008 that sustains a total physical loss or a substantial physical loss (fifty (50) percent or more) due to accidental causes including, but not limited to fire, storm, falling tree(s), flooding, natural disaster, acts of war or terrorism, may be rebuilt, provided

- (1) the replacement building or structure does not encroach farther into any setbacks than the building or structure that was lost,
- (2) the footprint of the replacement building or structure is not larger than the previous footprint for the main building or structure, and
- (3) the replacement building or structure does not exceed the building height of the building or structure that was lost.

(9-13-93; No. 06-01-08, 06-16-08)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(9).

Sec. 8-21. Garages and accessory buildings.

(a) No detached garage or other accessory building or structure shall be erected, except in the rear yard of any premises. The combined lot coverage of all accessory buildings shall not exceed twenty (20) percent of the rear yard.

(b) Any detached garage or other accessory building shall be located at least five (5) feet from any rear or side lot line or alley line.

(c) For any detached garage or other accessory building with a length along a rear or side lot line which has a linear dimension greater than twenty-four (24) feet, the minimum setback from that rear or side lot line shall be increased from the requirement in subsection (b) above at a ratio of one (1) foot for every one (1) foot that the dimension exceeds twenty-four (24) linear feet.

(d) No person shall construct any detached garage or other accessory building, or make any material replacement, alteration or addition to any existing detached garage or other accessory building, which shall exceed one (1) story in height.

(e) *Garage and accessory building height.*

- (1) The height of any detached garage or other accessory building, when measured from the average grade in front of the building to the highest point of the roof surface of a flat roof, shall not exceed twelve (12) feet.
- (2) The height of any detached garage or other accessory building, when measured from the average grade in front of the building to the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof, shall not exceed sixteen (16) feet.
- (3) The height of any detached garage or other accessory building, when measured from the average grade in front of the building to the highest point of the roof surface regardless of roof type, shall not exceed sixteen (16) feet.

(f) Attachment of any garage or other accessory building to a dwelling house shall not be permitted unless the resulting building complies with all requirements of this Chapter for a main building, including the residential building construction prohibitions set forth in section 8-17.

(9-13-93; No. 06-01-08, 06-16-08)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(10).

Sec. 8-22. Play equipment, fences, walls, trees, hedges and shrubbery.

(a) No person shall install any play equipment, tree trunk, hedge or shrubbery on private property within two (2) feet of a public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the private property, within five (5) feet of the curb, or if there is no public sidewalk and no curb, within five (5) feet of the nearest edge of the public street or alley.

(b) No person shall construct any fence or wall on private property within three (3) feet of a public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the private property, within six (6) feet of the curb, or if there is no public sidewalk and no curb, within six (6) feet of the nearest edge of the public street or alley.

(c) No play equipment, fence, wall, tree, hedge or shrubbery on private property shall be permitted to extend into public sidewalks, streets or alleys so as to interfere in any manner with pedestrians or vehicular traffic.

(d) No person shall install or maintain any play equipment, fence, wall, tree, hedge or shrubbery on private property at or near any street intersection in such a manner and at such a height as to interfere with a clear and unobstructed view of approaching pedestrians or vehicular traffic.

(e) No person shall construct any fence or wall at any location between the front building restriction line and the rear property line nor along any rear property line having a height greater than six and one-half (6 ½) feet. The measurement shall be made from the surface of the ground of the lower yard next to the fence or wall. With the written consent of the owner(s) of any adjoining property, a fence or wall of greater height than six and one-half (6 ½) feet at its highest point, may be erected or permitted if a special permit is obtained from the Board of Managers.

(f) No person shall construct any fence or wall which exceeds forty-eight (48) inches in height at any location between the front lot line and the front building restriction line.

(g) Notwithstanding subsections (a) and (b), any play equipment, fence, wall, tree, hedge or shrubbery existing on December 8, 2008 may be maintained, repaired or replaced so that the maintained, repaired or replacement structure or growth:

- (1) is in the same location as the existing structure or growth;
- (2) does not encroach any farther into the public improvement setback than the existing structure or growth;
- (3) does not exceed the height of the existing structure or growth;
- (4) is of substantially similar material or species as the existing structure or growth; and
- (5) is installed or constructed within six (6) months of the removal of the existing structure or growth.

(h) An arbor of lattice, trellis, or other open construction shall be subject to the same setback and location requirements as a fence, provided it does not exceed three (3) feet in depth, five (5) feet in width, and eight and one-half (8 ½) feet in height when located in a front yard, or five (5) feet in depth, ten and one-half (10 ½) feet in width, and eight and one-half (8 ½) feet in height when located in a side or rear

yard. An arbor that is not of open construction or that exceeds any of the foregoing dimensions shall be subject to the setback requirements for accessory structures.

(9-13-93; No. 11-1-93, 11-22-93; No. 10-03-08, 12-08-08; No. 10-04-08, 12-08-08; No. 02-04-10, 03-08-10.)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(11).

Sec. 8-23. Tennis courts, antennae, air conditioners, heat pumps and generators.

(a) *Tennis courts.* A tennis court may not be constructed to the front of, or within fifteen (15) feet of, any front building line of the residence on the property on which such tennis court is to be constructed.

Property shall include all lots under common ownership.

- (1) No tennis court shall be constructed within twenty-five (25) feet of any side or rear lot line. All measurements shall be made from the outermost portion of the court, including the fencing.
- (2) Every tennis court or the property on which such tennis court is situated shall be surrounded by a fence or wall or equivalent enclosure of not less than six and one-half (6 ½) feet in height.

(b) *Antennae.* An antenna may not extend more than six (6) feet above the highest point of the building to which it is attached.

- (1) No antenna shall exceed one (1) meter in diameter without a special permit from the Board of Managers. In addition to any other requirements for a special permit, the Board of Managers shall not grant a special permit for an antenna under this section unless it finds that the antenna will be located and screened so it is not visible from adjacent or public property.
- (2) No freestanding antenna shall be located in the area between the rear line of the residence and the front lot line.

(c) *Air conditioners, heat pumps and generators.* No person shall install an external air conditioner, heat pump or generator within seven (7) feet of any side lot line or rear lot line nor in the front yard of any property without a special permit from the Board of Managers. All external air conditioners, heat pumps and generators must comply with the noise control provisions and building regulations of the county.

(9-13-93; No. 11-1-93, 11-22-93; No. 9-01-99, 9-13-99)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(12).

Sec. 8-24. Swimming pools and outdoor therapeutic baths.

(a) *Building permit required.* No person shall construct, install, enlarge, or alter a swimming pool or outdoor therapeutic bath and related accessories within the Village unless a building permit therefore has been obtained from the Village Manager. Any swimming pool or outdoor therapeutic bath within the Village must conform to the regulations set forth in this chapter and to the regulations of the county relating to swimming pools.

- (1) The Village Manager shall not issue a building permit for a swimming pool unless the applicant has already obtained a building permit from the County.
- (2) An application for a building permit to construct, install, enlarge, or alter a swimming pool must set forth the detailed plans and specifications of the swimming pool, including the exact location of the swimming pool on the lot, all pertinent elevations, details as to the enclosure and the proposed lighting of the pool area.

(b) *Location.* No swimming pool shall be placed to the front of, or within fifteen (15) feet of, all front building lines of the residence on the lot or property on which such pool is to be placed.

- (1) No swimming pool shall be placed within fifteen (15) feet of any side or rear lot line. Such measurement shall be made from the inside wall of the swimming pool.
- (2) No swimming pool apron, deck or diving board shall be placed within ten (10) feet of any side or rear lot line.
- (3) No swimming pool pump, filter or other swimming pool accessory shall be constructed or installed within seven (7) feet of any side or rear lot lines without a special permit from the Board of Managers.

(c) *Enclosure.* Except as hereinafter provided in subsection (f), every swimming pool or the property upon which such swimming pool is situated shall be surrounded by a fence or wall or equivalent enclosure not less than sixty (60) inches in height above grade at the exterior of the fence, which shall be so constructed as not to be easily climbed or penetrated. Gates and/or doors to any such enclosure shall comply in all respects with County regulations pertaining to swimming pool enclosures, and shall be maintained in good condition. A dwelling house or accessory building may be used as part of such enclosure.

(d) *Lighting.* Lights used to illuminate any swimming pool and/or any areas adjacent to any swimming pool shall be so arranged and shaded so as to reflect light away from adjoining premises, and shall be maintained and operated in such a manner as not to be a nuisance or annoyance to any neighboring property. In no event shall any such lights be on after midnight.

(e) *Noise.* No person shall make, continue or cause to be made or continued, at any swimming pool, any loud, unnecessary or unusual noise, or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace and safety of others.

- (1) All pools shall be maintained and operated so that they do not cause a nuisance or annoyance to neighboring property owners or residents of the Village.
- (2) Any diving board, slide or other equipment used in or around any pool shall be constructed, affixed, designed, fastened or snubbed as to minimize unnecessary noise resulting from the use or operation of such diving board, slide or other equipment.

(f) *Existing swimming pools.* The use of any swimming pool which was lawful when this Chapter was enacted may be continued, provided the swimming pool is operated and maintained in accordance with all requirements of this chapter with the exception of subsection (c) above if, in the discretion of the Village Manager, the existing pool is surrounded by natural planting which is equivalent to a fence or wall inasmuch as the natural planting in question cannot be easily climbed or penetrated.

(g) *Portable swimming pools.* Every portable swimming pool shall be covered with a protective cover or stored in a safe place or condition when not in actual use. "Protective cover" shall mean any fabric, plastic, rubber, metal or net capable of covering the entire swimming pool surface so as to prevent unsupervised, casual or accidental access to such a pool. A protective cover, when in use, shall be firmly secured or anchored and capable of supporting a minimum of two hundred fifty (250) pounds. All such covers, their anchors and attaching mechanisms/devices shall be maintained in proper operating condition.

(h) *Outdoor therapeutic baths.* An outdoor therapeutic bath shall be screened from neighbors by fencing, planting, or otherwise, so as to provide privacy to users thereof and not to impinge on the privacy of the neighbors.

- (1) Any outdoor therapeutic bath shall be maintained and operated so as not to annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of others.

- (2) An outdoor therapeutic bath shall be equipped with a protective cover, as defined in subsection (g) above, that shall be secured in place covering any such bath and shall be locked so as to prevent access when the bath is not in use.
- (3) Every such bath shall also comply with subsections (a), (b), (d) and (e) of this section.

(9-13-93; No. 11-1-93, 11-22-93)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(13).

Sec. 8-25. Alteration of water flow or drainage.

(a) Any person intending to perform grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, or the installation of any downspout or drain which, in the opinion of the Village Manager, will alter the existing or natural flow of water in such a way that it may reasonably be expected to cause such water or drainage to flow onto abutting property or onto the public right-of-way must obtain a building permit therefore from the Village Manager.

(b) No grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, or the installation of any downspout or drain which will alter the flow of water or drainage so as to have an adverse effect on abutting or nearby properties or on the public right-of-way shall be approved by the Village Manager.

(c) The Village Manager may issue a building permit for grading or construction of impermeable surfaces, such as patios, driveways, walkways or terraces or other paving, which will alter the flow of water or drainage, upon such terms or conditions as the Village Manager deems necessary to avoid adverse effects upon abutting or nearby properties or onto the public right-of-way.

(d) Any swimming pool, portable swimming pool or outdoor therapeutic bath within the Village shall be maintained so that pool water does not collect, seep, overflow, splash or run onto or across abutting property or onto the public right-of-way. Intentional drainage of swimming pools must ensure that such drainage flows into a storm-water drain.

(9-13-93)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(14).

Sec. 8-26. Driveways on private property.

Any driveway on private property may not exceed fifteen (15) feet in width without a special permit from the Board of Managers, except that the apron in front of a two-car garage may extend the full width of the two-car garage, provided that such apron does not exceed twenty (20) feet in length.

(9-13-93; No. 11-1-93, 11-22-93)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(15).

ARTICLE IV. PUBLIC RIGHTS-OF-WAY

Sec. 8-27. Maintenance of public right-of-way devoted to private use.

(a) The public property located between public sidewalks and abutting private property (or, in the absence of public sidewalks, located between the paved roadways and abutting private property) where such public property is under the immediate care and keeping by an abutting property owner or occupant, shall be considered to be public right-of-way devoted to private use. The Village, by this Chapter, grants to abutting property owners or occupants so using the public right-of-way a license to continue to use the public right-of-

way, subject to the provisions of Section 8-31; provided that this license may be revoked at any time by the Village in accordance with the provisions of this Chapter. In no case shall any part of any unimproved public right-of-way (a right-of-way which has not been improved with a paved roadway) be considered to be a public right-of-way devoted to private use, and no license to use such right-of-way shall be implied and no license may be issued by the Board of Managers or the Village Manager.

Notwithstanding the foregoing, any written license to devote public property to private use executed prior to March 14, 2011 issued by the Board of Managers or the Village Manager shall not be revoked by the adoption of this Ordinance and shall remain in effect as issued until revoked or modified in accordance with the terms of said license.

(b) All written licenses to use the public right of way issued by the Building Officer and the Village Manager, as provided in this Chapter, shall contain a provision requiring the licensee, and the licensee's successors in interest, to indemnify and hold the Village harmless from any and all losses, claims, damages, demands, liabilities and other obligations to persons or property resulting or arising in any way from the licensee's use of the area subject to the license or from the licensee's failure to properly maintain the licensed area.

(c) In cases where a written license to use the public right of way is required by this Chapter or by a decision granting a variance or special permit, the license shall be recorded in the Land Records of Montgomery County, by the Village, at the expense of the property owner receiving such license. Notwithstanding the foregoing, the Building Officer and the Village Manager may waive the requirement that the written license be recorded in the land records if they find that the benefits of recording the license do not exceed the cost and inconvenience of recording the license.

(9-13-93; No. 03-02-11, 03-14-11; No. 09-02-11, 09-12-11)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(17).
Written licenses required by Sections 8-29(b); 8-30(e) and 8-31(b).

Sec. 8-28. Disruption of Village streets or sidewalks.

(a) Any person intending to undertake construction, which will disrupt a Village street or sidewalk, whether such construction is for public or private use, must first obtain a building permit. Where such construction involves excavation, alteration, modification or planting in the Village street or sidewalk, or might damage the Village street or sidewalk, the Village Manager may require a cash, surety or performance bond sufficient to cover the cost of restoring the street or sidewalk to its original state. The person to whom such building permit is issued shall be responsible for restoring the disrupted area. If the disrupted area is not restored within fifteen (15) days of demand by the Village Manager, the Village may restore the area and charge the permit holder, or may claim the bond to reimburse the Village for the cost of restoration. If the bond is not sufficient to cover such costs, the permit holder shall, as directed by the Village Manager, pay to the Village any such deficiency. The unexpended balance of any bond shall be returned to the permit holder.

(b) No person shall store or allow an accumulation of refuse, excavation or construction debris, or any construction materials on any public street or sidewalk. Accumulation of mud or dirt must be removed from the street daily.

(c) Temporary repair, alteration, or modification to any street or sidewalk which prohibits the free passage of vehicles or pedestrians shall be clearly marked with barricades and/or safety barriers. Temporary closing of any sidewalk shall not exceed ten (10) days unless specifically authorized by the Village Manager.

(d) It shall be unlawful for any person or persons to leave any obstruction on, or excavation in, any street, park, or other public right-of-way, after sunset and before sunrise, without having such obstruction or excavation denoted by at least two (2) visible warning lights placed in such a manner as to show the extent of such obstruction or excavation.

(e) No person shall place or maintain a dumpster, in any portion of any public right of way.

(9-13-93; No. 10-02-02, 10-14-02; No. 10-03-02, 10-14-02)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(18).

Sec. 8-29. Overhead or underground wires, cables, hoses, pipes, and similar facilities.

(a) Any person or persons, firm or corporation desiring to string, lay, hang, suspend or in any manner place wires of any kind, cables, hoses, pipes, and similar facilities on, over, or under any street or other public right-of-way within the Village must obtain a building permit from the Village Manager. The Village Manager shall issue a building permit upon such terms and conditions as the Village Manager deems appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities. Such building permit shall contain a contract provision for holding the Village harmless from loss, injury or damage related to any such construction.

(b) A written revocable license to use the public right-of-way shall be required for the installation or replacement of wires, cables, hoses, pipes, and similar facilities installed on, over, or under any street or other public right-of-way, except for telecommunication, electric transmission lines, and other facilities operated by a public utility or similar service. The Building Officer and the Village Manager may issue a written license to use the public right-of-way upon such terms and conditions as the Building Officer and the Village Manager deem appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities.

(9-13-93; No. 02-02-10, 02-16-10; No. 09-02-11, 09-12-11.)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(19).

Sec. 8-30. Driveways and walkways crossing public right-of-way.

(a) Any portion of a private driveway which crosses the public right-of-way may not exceed ten (10) feet in width without a special permit from the Board of Managers, except that the apron where the driveway connects with the street shall be allowed a five-foot radius on each side of the driveway for a total entrance at the curbside not to exceed twenty (20) feet in width.

(b) There shall be no more than one (1) curb cut for a property.

(c) All residential driveways and aprons shall be installed in accordance with current County standards.

(d) When a driveway is installed or removed, the abutting property owner shall restore the area from which the driveway was removed by installing a curb, sidewalk, grass or other ground cover and/or plantings consistent with the adjacent area.

(e) A written revocable license to use the public right-of-way shall be required for the installation or replacement of any private walkway within the public right-of-way. The Building Officer and the Village Manager may issue a written license to use the public right-of-way upon such terms and conditions as the Building Officer and the Village Manager deem appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities.

(f) Any private walkway located within the public right-of-way shall be maintained, replaced, or removed by and at the expense of the owner or occupant of the abutting property.

(9-13-93; No. 11-1-93, 11-22-93; No. 12-01-99, 12-13-99; No. 06-01-08, 06-16-08; No. 02-02-10, 02-16-10; No. 09-02-11, 09-12-11.)

Cross reference(s)--In accordance with Montgomery County Department of Public Works Standard No. 23-C, the Board of Managers requires that all new driveway aprons shall be paved in concrete. The fine for violation of this section, § 6-3(a)(20).

Sec. 8-31. Structures, play equipment, fences, walls, trees, hedges and shrubbery in public right-of-way.

(a) No structures, play equipment, fence, wall, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement. The filing of any right-of-way license agreement with the county recording department shall be done by the Village at the expense of the property owner receiving such license. For the purposes of this section, masonry piers and pillars shall be considered to be walls.

(b) The Building Officer and the Village Manager are authorized to issue a license for a fence, wall, tree, hedge, shrub or other growth on public property devoted to private use provided the Building Officer and the Village Manager find that the following standards are met.

- (1) No fence, wall or hedge shall exceed 48 inches in height.
- (2) All fences, trees, hedges, shrubbery and other growth shall be installed at least two (2) feet from the public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the applicants property, five (5) feet from the curb, or if there is no public sidewalk and no curb, five (5) feet from the nearest edge of the paved roadway.
- (3) All trees, hedges, shrubs and other growth shall be installed and maintained so as to not extend into public sidewalks or streets in a manner which may interfere with pedestrians or vehicular traffic.
- (4) All walls shall be constructed at least three (3) feet from the public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the applicants property, six (6) feet from the curb, or if there is no public sidewalk and no curb, six (6) feet from the nearest edge of the paved roadway.
- (5) The fence, wall, tree, hedge, shrubbery or other growth will not adversely affect the public health, safety or welfare, nor the reasonable use of any adjoining property and the issuance of the license is consistent with the purpose and intent of this Chapter.

(c) Except as provided in Section 8-31 (b), no structures, play equipment, fence, wall, tree, hedge or shrubbery, or any other growth shall be permitted on public property devoted to private use without a special permit from the Board of Managers.

(d) Any structures, play equipment, fence, wall, tree, hedge or shrubbery, or any other growth placed on public property devoted to private use shall be maintained, replaced or removed by and at the expense of the owner or occupant of the abutting property.

(e) No structures, play equipment, fence, wall, tree, hedge or shrubbery or any other growth located on public property devoted to private use by an abutting owner or occupant shall be permitted to extend into any public sidewalk, street, or alley so as to interfere in any manner with pedestrians or vehicular traffic.

(f) Any structures, play equipment, fence, wall, tree, hedge or shrubbery, or any other growth placed on public property devoted to private use by an abutting owner or occupant at or near any street intersection shall be maintained by such owner or occupant in such a manner and at such height that a clear and unobstructed view is available to approaching pedestrians or vehicular traffic.

(g) The Village Manager may revoke the license to use the public right-of-way for private purposes for failing to maintain and/or meet the requirements of this Chapter.

- (1) Before revoking the license to use the public right-of-way for private purposes, the Village Manager shall serve written notice upon the owner or occupant of the abutting property specifying the violation, the necessary corrective action to be taken, and the period of time within which such corrective action is to be taken.

- (2) The owner or occupant so notified shall have the right to appeal the decision of the Village Manager to the Board of Managers or apply for a special permit or variance (see section 8-12 (b)). Notice of such an appeal must be filed within ten (10) days after receipt of the written notice of violation.
- (3) The Village Manager may enter such public property devoted to private use and take such action as is necessary to return the public property to a condition required by this Chapter. The cost of any corrective action may be specially assessed against the abutting property and collected with the property taxes or collected by a suit for damages.

(9-13-93; No. 11-1-93, 11-22-93; No. 6-02-99, 6-14-99; No. 9-01-00, 9-26-00; No. 10-04-08, 12-08-08; No. 09-02-11, 09-12-11.)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(21).

Sec. 8-32. Removal of snow and ice from public sidewalks.

(a) Every person who owns, occupies or controls any lot fronting or abutting an improved public sidewalk, except an improved public sidewalk that is within a state highway right-of-way, whether as an owner, tenant, occupant, lessee, or otherwise, shall remove and clear away, or cause to be removed and cleared away, all snow and ice from so much of such sidewalk as is in front of or abuts on such lot or parcel of land within the first forty-eight (48) hours after the cessation of the falling of any snow, sleet or freezing rain.

(b) In the event snow and ice on a sidewalk has become so hard that it cannot be removed without the likelihood of damage to the sidewalk, the person charged with its removal in subsection (a) above shall, within the time set forth in subsection (a) above, cause enough sand or other abrasive to be put on the sidewalk to make travel thereon reasonably safe and shall then, as soon thereafter as weather permits, cause the sidewalk to be thoroughly cleaned.

(c) In the event any person fails to clear away snow and ice, or treat with abrasive and subsequently clear away snow and ice, from any sidewalk or cause this to be done as hereinbefore provided, the Village Manager may, in his discretion, cause such work to be done. The Village Manager shall ascertain and keep a record of the cost of all such work that he causes to be done in accordance with this subsection.

(d) Each person whose act or omission makes it necessary that the Village Manager cause the work to be done in accordance with subsection (c) above shall be liable to the Village for the cost of such work, plus a penalty of fifty (50) percent of such cost. The cost and expenses incident to such removal shall become a tax lien against the property and may be collected with the property taxes or collected by a suit for damages.

(e) No person shall deposit or cause to be deposited any snow or ice on or against any fire hydrant or on any public sidewalk or street.

(9-13-93; No. 05-01-10, 05-10-10.)

Cross reference(s)--Fine for violation of this section, § 6-3(a)(22).

Sec. 8-33. Reserved.